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No.

In the Supreme Court of the United States

October Term, 1984

JAMES R. AND HELEN SMITH,
Petitioners,

vs.

FRANK J. MURPHY,
Respondent.

ON WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS, WESTERN DISTRICT

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QUESTION PRESENTED FOR REVIEW

Whether a state court violates due process guarantees of the Fourteenth Amendment by placing guardians (a natural mother and stepfather) in a "Catch-22" position, viz., removal of them from office for failure to pay a judgment against the ward's estate, such action being in derogation of clear statutory requirements of priority payments.

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Text

LEWIS & PEOPLES, THE SUPREME COURT AND THE CRIMINAL PROCESS—CASES AND COMMENTS (SAUNDERS, 1978) 92 5

No.

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CASE REPORTED

The case is reported at 682 S.W. 2d 42, *Murphy v. Smith.*

JURISDICTION

The Missouri Court of Appeals ruled October 9, 1984, and timely Application to transfer to the Supreme Court of Missouri was filed and subsequently denied January 15, 1985. Jurisdiction is invoked under provisions of 28 U.S.C. § 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment, Sec. 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Mo. R.S. 1979:

Sec. 475.260. 3. When there is a conservator of the estate, the property and rights of action of the protectee shall not be subject to garnishment or attachment and execution shall not issue to obtain satisfaction of any judgment against the protectee or the conservator of his estate as such, but judgments against the estate of the protectee shall be enforced in the manner provided for the enforcement of judgments against the estates of decedents.

Sec. 473.430. All claims and statutory allowances against an estate shall be paid by the personal representative, as far as he has assets, in the order specified in Sec. 473.397; and no claim or allowance of one class shall be paid until all previous classes are satisfied or it appears that there are sufficient assets to satisfy all previous classes. If there are not sufficient assets to pay the whole of any one class, claims shall be paid in proportion to their amounts. Exempt property, family allowance and homestead allowance have priority for payment, in the order listed, among themselves.

Sec. 473.397. All claims and statutory allowances against the estate of a decedent shall be divided into the following classes:

(1) costs;

(2) expenses of administration;

(3) exempt property, family and homestead allowances;

(4) funeral expenses;

(5) debts and taxes due the United States of America;

(6) expenses of the last sickness, wages of servants, claims for medicine and medical attendance during the last sickness, and the reasonable costs of a tombstone;

(7) debts and taxes due the state of Missouri, any county, or any political subdivision of the state of Missouri;

(8) judgments rendered against the decedent in his lifetime and judgments rendered upon attachments levied upon property of the decedent during his lifetime;

(9) all other claims not barred by Sec. 473.360.

STATEMENT OF THE CASE

One Fetterolf has been hospitalized in a state facility at Marshall, Missouri since February, 1971. His natural father being deceased, his mother and stepfather were appointed co-guardians (Petitioners herein). The Petitioners were leading volunteers at the facility, but Respondent petitioned for their removal as guardians essentially because they did not pay a judgment obtained against the estate by the state facility (Marshall), which exceeded the

apparent assets of the estate. Petitioners' brief in the Missouri Court of Appeals framed the constitutional context:

> "In sum (respondent's), grievance is that Marshall has not been paid—though Marshall has not taken the proper steps to enforce payment.
>
> "(Petitioners) are under a solemn statutory duty . . . to defend all actions and as in any other controversy, when settlement negotiations fail, they are duty-bound to litigate as adversaries.
>
> "Once the Marshall claim was reduced to judgment, the provisions of Mo. R.S. 475.260 became applicable: 'Execution shall not issue . . . but judgment against the estate . . . shall be enforced in the manner provided for the enforcement of judgment against the estates of decedents.' Reference to decedent's estates notes that there is a mandatory classification of preferential payments with the Marshall judgment relegated to a position 'down the list.' Mo. R.S. 473.430, 473.397. To date, Marshall has not sought to proceed under the statutory procedure to enforce its judgment.
>
> "Obviously, for the guardians to strike out and pay Marshall when the priority classes have not been satisfied and it is evident that the net assets of the estate are insufficient *would* amount to a violation of official duties and *would* subject them to removal for mismanagement by disregarding the mandatory provisions of statute!
>
> "Surely, courts would violate Due Process guarantees of the Missouri (Mo. Const. 1945, Article I, Sec. 10) and United States (U.S. Const., Amend. 14) Constitutions if they were to be permitted to place guardians in such a 'Catch-22' situation."

ARGUMENT

The Due Process guarantee has evolved through the years as being of fundamental character, Mr. Justice Stevens noting that to punish (here, by removal of guardians) because one has done what the law plainly allows (here, actually commands) is a due process violation "of the most basic sort." *United States v. Goodwin*, 457 U.S. 368, 372.

This principle, it is submitted, has direct application to the case at bar when the family is punished by removal of the mother and stepfather as guardians of their son's estate.

Petitioners have conformed to the clear statutory directions and it is the state judiciary that wandered afield in the imposition of punishment contrary to the clear and valid statute under which petitioners proceeded. The situation harks back to the leading case from Missouri, *Brinkerhoff-Faris v. Hill*, 281 U.S. 673, 680, holding that the due process violation is nonetheless clear when that result is accomplished by the state judiciary in the course of construing an otherwise valid state statute.

As summarized by the text writers, "substantive due process protects all persons . . . and acts as a limitation against arbitrary governmental actions. . ." LEWIS & PEOPLES, THE SUPREME COURT AND THE CRIMINAL PROCESS—CASES AND COMMENTS (SAUNDERS, 1978) 92.

It is submitted that the Missouri judiciary should be subject to appropriate guidance concerning due process guarantees afforded family members holding fiduciary responsibility as guardians of an incompetent son's estate

who, by following the clear instructions of statute, are consequently punished by removal from office.

The writ should be granted.

Respectfully submitted,

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Attorney for Petitioners

APPENDIX

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

FRANK J. MURPHY, As Guardian Ad Litem For The Person And Estate of Gary Fetterolf	)	
Petitioner,	)	Docket No. PR83-112492-04
vs.	)	Estate No. 112492
JAMES R. AND HELEN SMITH	)	Division No. 10-E
Defendants.	)	

ORDER REMOVING GUARDIANS

On November 15, 1983, the above cause came on for trial. Petitioner, Frank J. Murphy, guardian ad litem, appeared in person and in his capacity as attorney. Defendants appeared in person and by their attorney. The case was called and the parties announced ready. Evidence was adduced by the respective parties. Upon conclusion of the evidence, the cause was submitted to the Court and by the Court taken under advisement.

Based upon the evidence presented and being fully advised in the premises, the Court makes the following findings and conclusions:

1. The guardian, James R. Smith, knowingly misrepresented the assets of the estate of Gary Fetterolf to the Missouri Department of Mental Health.

2. The guardian, Helen Smith, failed and neglected to advise or inform the Department of Mental Health as to the nature and extent of the ward's income and estate.

3. As a result of such misrepresentation and neglect of the guardians, on or about June 10, 1980, a claim in the amount of $13,828.13 plus accrued interest from September 1, 1971 to December 31, 1978 in the sum of $2,348.33 was allowed against the ward's estate on behalf of the Department of Mental Health for board, care and services rendered to Gary Fetterolf.

4. Said judgment has become final; that more than a reasonable time has thereafter elapsed, but the guardians have failed, neglected and refused to pay said claim without just cause or excuse.

5. There is currently past due the Department of Mental Health the sum of $1,184.08 for board and care for the ward between July, 1982 and December 31, 1982; that the guardians herein have failed, neglected and refused to pay said amount without just cause or excuse.

6. Because of the guardians' failure to provide adequate clothing for their ward, the Department of Mental Health provided the same and in September, 1982 billed the guardians $102.66 the amount advanced for such clothing; that the guardians herein have failed, neglected and refused to pay such amount without just cause or excuse.

7. Although the guardians were obligated to pay for their ward's board and care at the Marshall State School and Hospital, they failed and neglected to pay the charges therefor on a regular basis since January 1979; that since January, 1979, payments have been irregular and in several instances three to five months elapsed between payments.

8. Because of the guardians' failure to pay the charges for his board and care at the Marshall State School and Hospital, they have jeopardized his continued status as a patient at said facility.

9. The guardians of Gary Fetterolf have mismanaged the financial affairs and obligations of their ward to his potential detriment.

10. The guardians have thereby failed to discharge their official duties and should be removed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that James R. Smith and Helen Smith are removed as guardians of the person and the estate of Gary Fetterolf, incompetent and the letters of guardianship heretofore issued to James R. Smith and Helen Smith are revoked.

Dated this 18th day of November, 1983.

/s/ Gene R. Martin
Gene R. Martin, Judge

Copy of the foregoing mailed this 18th day of November, 1983, to:

Frank J. Murphy, attorney and guardian ad litem

Elwyn Cady, attorney for defendants.

/s/ (Illegible)
Clerk

(Opinion Filed: October 9, 1984)

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

FRANK J. MURPHY, as Guardian Ad Litem For the Person and Estate of Gary Fetterolf,	)	
Respondent,	)	No. WD 35706
-vs-	)	
JAMES R. SMITH and HELEN SMITH,	)	
Appellants.	)	

Appeal From the Circuit Court of Jackson County
Honorable Gene R. Martin, Judge

Before Clark, Presiding Judge, Manford and Lowenstein, JJ.

After a bench trial, appellants James R. Smith and Helen Smith were ordered removed as guardians of the person and estate of Gary Fetterolf, an incompetent. On this appeal, the Smiths contend the judgment of removal was in error because their conduct was responsive to their statutory duties as guardians. Affirmed.

Gary Fetterolf was injured in an automobile accident December 27, 1970 and on March 10, 1971, he was declared incompetent, the consequence of a head injury suffered in the accident. The Smiths, on their own application, were appointed guardians of Fetterolf's person and estate. For

many years, Fetterolf has been a patient at the Marshall State School and Hospital. He is totally incapacitated.

Patients at the Marshall institution are billed for the cost of care based on ability to pay. For the purpose of determining that ability, a report of individual resources is required. The Smiths made such a report on behalf of Fetterolf and represented that he and his estate were possessed of only minimal and inconsequential assets. As a result of Fetterolf's apparent indigency, his charge for daily care was assessed at $1.66.

In 1977, it first came to the attention of officers at the Marshall institution that the Smiths had been receiving social security benefit payments on account of Fetterolf's disability and had accumulated a fund which then amounted to $10,439.15. The state recomputed the amount owed for Fetterolf's past care based on the true resources of the estate and presented a claim to the probate court. In that proceeding, Department of Mental Health v. Smith, Jackson County Circuit Court No. PR79-112492-01, the court found that the Smiths "knowingly, willfully, wrongfully and falsely" had misrepresented to the Department of Mental Health the extent of the estate's assets. The claim was allowed in the amount of $13,828.13 plus accrued interest from September 1, 1971 to December 31, 1978 amounting to $2,348.33. At the date of trial of the present case, the claim remained unpaid by the guardians and had accumulated interest at 9% a year since the date rendered.

When the state acquired notice of the Fetterolf social security benefit entitlement in 1977, the monthly contribution requirement for future care was redetermined and was increased thereafter as social security payments were adjusted nationally. The guardians also failed to pay these

monthly care bills regularly and, as of the date of trial, an additional delinquency amounting to $1,184.08 had accumulated. That amount did not subsequently increase because, pursuant to state action in 1983, the Department of Mental Health has been designated representative payee and has received the social security payments for Fetterolf's account.

The judgment in this case ordered appellants removed as guardians for several enumerated reasons among which were failure to pay the allowed claim of the Marshall State School and Hospital, the failure to pay current charges in full incurred by the incompetent at the Marshall institution during the period from 1979 to 1982 and because the continued status of the incompetent as as patient at the Marshall facility was jeopardized by the failure of the guardians to pay the ward's accounts.

Appellants' brief and argument are less than models of clarity and the statement of the single point on appeal is of doubtful relevance or application to the facts. As best the contention can be interpreted, however, the guardians assert that the amount of the allowed claim for past care of the incompetent exceeded the funds of the estate and, therefore, in discharge of their duties as guardians, appellants were obligated not to make payment on the claim until forced to do so. This, they say, necessitated a recourse by the state to execution, as provided in § 475.260, Laws of Mo. 1983, p. 885, through application of § 473.573, RSMo 1978. The appellants' position is that they breached no duty by requiring the Marshall school to enforce its allowed claim by execution against the guardians.

We assume for disposition of the point, although the record provides no confirmation, that present assets of the guardianship estate amount to less than the balance of the

judgment awarded the Department of Mental Health on its claim. The fact remains, however, that the claim has been allowed after vigorous contest by appellants. Section 475.213, Laws of Mo. 1983, p. 884 required the guardian[1] to pay all allowed claims, as far as he has assets. If potential but unallowed claims against an estate offer the prospect that limited estate assets may require payment in discounted amounts, the guardian is obligated by the statute to provide the clerk of the court with names and addresses of creditors for the purpose of giving notice. Within the time specified after notice, the guardian may then consider unfiled claims as barred and pro rata distribution may be made.

In this case, appellants have not suggested that any other claims may be outstanding against this estate and there has been no showing that expenses of administration have been allowed or will be allowed. Apart from court costs, the amount of which has not been described, the sole obligation of the estate, discernible from this record, is the subject claim due the Department of Mental Health. It is the sheerist sophistry to assert, as do appellants, that they are somehow fulfilling a fiduciary duty by requiring the creditor, the Department of Mental Health, to resort to execution to force appellants to meet their statutory duty to pay the claim to the extent of estate resources.

The trial court found that appellants should be removed as guardians because they failed to pay the allowed claim of the Department of Mental Health without just cause or excuse. That finding was amply supported by the evidence for the reasons mentioned above. Appellants' removal, however, was not conditioned alone on this find-

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1. The term "conservator" has been substituted in the 1983 amendment to the statute and "protectee" is used in place of ward or incompetent.

ing. Although appellants contest their removal only as unjustified because of the claim circumstance, the trial court recited other grounds for its judgment.

According to the evidence, appellants also failed to pay when due other bills rendered by the Marshall facility for board, care and clothing of the ward and, as a consequence of the continuing delinquencies in the account, the status of Fetterolf as a patient at the hospital was placed in jeopardy. In short, while appellants accumulated a large sum of money in the estate account, the beneficiary was dependent upon state charity, as a matter of grace potentially terminable from day to day, for his board and care. The court found that in so doing and by incurring the expenses associated with the misrepresentation of the estate assets and the subsequent claim proceedings, appellants mismanaged the financial affairs of the ward to his potential detriment. The record also supports this finding made by the trial court.

The trial court properly ordered the letters of guardianship previously issued to appellants revoked. That judgment is affirmed.

All concur.

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Donald B. Clark, Presiding Judge

No. 66637

IN THE SUPREME COURT OF MISSOURI

No. WD 35706

September Session 1984

Frank J. Murphy, as Guardian Ad Litem for the Person and Estate of Gary Fetterolf, Respondent,

vs. TRANSFER

James R. Smith and Helen Smith, Appellants.

Now at this day, on consideration of Appellants' Application to transfer the above entitled cause from the Western District Court of Appeals, it is ordered that said application be, and the same is hereby denied.

STATE OF MISSOURI—SCT.

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 1984, and on the 15th day of January 1985, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 15th day of January, 1985.

/s/ Thomas F. Simon
Clerk